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Rethinking Property Law Modules: Putting Theory into Practice

A. Introduction

Property Law constitutes one of the seven *Foundation of Legal Knowledge* subjects that the Solicitors Regulation Authority (SRA) and the Bar Standards Board (BSB) insist students must complete in order to gain a qualifying law degree (QLD).¹ Gaining a QLD allows students to proceed straight to the vocational stage of training; going on to the Legal Practice Course (LPC) or Bar Professional Training Course (BPTC), and then onto a training contract or pupillage, after which time they will become a fully qualified solicitor or barrister. As a *Foundation of Legal Knowledge* subject, Property Law is designated as an extremely important element of the academic stage of training; and rightly so, as land is an integral part of our everyday lives. It constitutes where we live, work, relax et cetera. Land also ultimately dictates our survival, in that it affects how and what we eat. Furthermore, land is an important commercial commodity that is frequently bought, sold, and is subject to various other legal transactions. It is therefore easy to understand why Property Law has been designated as a *Foundation of Legal Knowledge* subject. A sound understanding of the fundamental principles which underpin the ownership of land in England and Wales is absolutely essential for students reading law. Students need to get to grips with the creation, protection and transfer of legal interests in land as early as possible in their legal careers. They need to gain in-depth knowledge of the statutory provisions affecting land, as well as the most significant case law. A sound understanding of the basic principles of Property Law will also enable them to critically evaluate the legal framework concerning land and help them to situate it within the wider social and legal context.

Property Law is therefore an important inclusion as a core module on a QLD programme. Despite its obvious importance as an academic subject, there is some evidence that students dislike the study of Property Law modules generally,² and that

¹ SRA 'Joint statement on the academic stage of legal training' <<https://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>> accessed 21 December 2015 and BSB 'Academic stage requirements' <<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/academic-stage/>> accessed 21 December 2015

² J Mackenzie and M Phillips, *Textbook on Land Law* (14th Edition, OUP 2012) page vii

students perceive that it is a very difficult subject³ with which they must get to grips. Aside from the perception that Property Law is both difficult and boring, numerous problems with Property Law modules have been identified, and these will be examined in the next section of this work. The section that follows the examination of problems associated with Property Law modules will demonstrate why, in addition to solving those problems identified in section B, Property Law modules need to evolve; namely because, as a result of the recommendations stemming from the recent Legal Education and Training Review (LETR) exercise, the SRA is currently considering how to reform the route to qualification as a solicitor in England and Wales. Any reform(s) the SRA chooses to implement may have important ramifications for the academic and vocational stages of the training of aspiring solicitors. This article will consider the effect of such possible reform(s) on what is currently a core QLD module on any Bachelor of Laws (LLB) programme i.e. Property Law. Due to the recency of the SRA proposals, the full implications of the proposed reform(s) have yet to be undertaken (not least in relation to a specific core subject), wherein the value and originality of this work lies. Moreover, though it is not clear exactly which reform(s) will be adopted, it has been emphasised that some change(s) should be expected. Furthermore, it would appear that the SRA strongly favours the proposal to create a universal examination for aspiring solicitors.⁴ The proposed changes to the legal profession outlines are inextricably linked to legal education.⁵ Therefore, debates concerning enterprise and financialisation are as relevant to legal education as they are to the profession, given the higher student fees and uncapped intakes for law schools.⁶

The aim of this article is to outline the current difficulties experienced by students studying Property Law and to make recommendations to improve the quality of Property Law modules.

B. Current Problems with Property Law Modules

³ K Gray and S Gray, *Land Law* (7th edition, OUP 2011) preface

⁴ SRA, 'SRA proposes a Solicitors Qualifying Examination for all new solicitors' <<https://www.sra.org.uk/sra/news/press/sqe-consultation-2015.page>> accessed 17 December 2015

⁵ H Sommerlad and P Sanderson, *Training and Regulating those Providing Publicly funded Legal Advice Service: A case Study of Civil Provision* (Ministry of Justice, 2009)

⁶ H Sommerlad, R Young, S Vaughan and S Harris-Short, 'The Futures of Legal Education and the Legal Profession' in H Sommerlad, R Young, S Vaughan, S Vaughan and S Harris-Short (eds) *The Futures of Legal Education and the Legal Profession* (OUP, 2015), 13

Although a degree of variation between different universities might be expected as regards the teaching of individual modules, a number of common problems can be identified with Property Law modules on the whole. These problems will be examined in detail in this section.

1. Perception that Property Law is difficult and boring

One reason why students may find Property Law a difficult subject, particularly at the outset is that they are likely only to have had limited dealings with land related transactions in their lives. They may have recently been party to a tenancy agreement for example, when they rent accommodation upon arrival at their chosen university campus. However, they are very unlikely to have purchased real property before, or have taken out a mortgage for example. Thus, students' exposure to land related transactions would surely have been very limited by the time they come to study Property Law modules. This is in stark contrast to other branches of law, with which they may be able to relate more closely. For example, everyone will have been party to a contract at some point in their lives e.g. the act of purchasing a cinema ticket or doing weekly shopping at the supermarket would constitute the formation of a contract. Moreover, students are likely to have been exposed to other branches of law more readily through the media e.g. reference to criminal law is made on a daily basis in newspapers and on the television through the daily news reports or on shows about crime, police and the criminal legal process.

Another reason that students may perceive Property Law as difficult and boring is the lecturers' tendency to overemphasise the historical background of real property⁷. This in turn, leads many students to the conclusion that Property Law is a difficult and boring subject, "many law students and practitioners regard[ed] the subject with dislike...one source of confusion and often boredom in the student was produced by the traditional method of teaching land law in which the historical background to the subject was heavily emphasised."⁸

Also, linked to this is the traditional over emphasis on teaching of the theoretical framework of substantive law, usually with a focus on highly technical legal aspects of property. In the authors' experiences of several different higher

⁷ M Weir, 'Ways to Make the Teaching of Property/Land Law More Interesting' (2007) 11 *Journal of South Pacific Law* 107

⁸ Mackenzie and Phillips, *supra* note 2

education institutions, lecturers tend to focus on theory at the expense of consideration of almost all practical elements related to land and the wider context within which Property Law is based. Indeed, the UK Centre for Legal Education (UKCLE) criticises the current approach to legal education generally, stating that “there is no attempt made to place the study of law within its context or to convey to intending students, employers or other interested parties what is distinctive and intellectually exciting about the discipline of law.”⁹

The tendency of lecturers to overemphasise the historical background and highly technical theoretical aspects is less than ideal as it often leads to a general dislike of the subject, and to the perception that Property Law is boring. Moreover, it deprives students of the opportunity to learn some of the practical aspects of property e.g. what a transfer deed looks like and the process of applying to the land registry for transfer of real property. Examination of some of these practical issues and processes would surely engage students more by piquing their interest. Furthermore it would give students a small taste of what their professional lives might entail should they wish to consider a career in conveyance.

Additionally, such tendency means that important issues of which future solicitors will need to be aware, such as ethics and code of conduct concerns regarding future conveyances are not considered. For example, solicitors should decline to act for more than one party in a sales transaction, and consideration of the steps that need to be taken by solicitors when advising a vulnerable surety in a mortgage transaction.

In recent times there has been some evidence of a trend towards so-called problem based teaching and learning in Property Law modules by some lecturers and institutions.¹⁰ Such a shift has begun to address the problem of overemphasis on theoretical aspects of Property Law to some extent. However, problem based teaching and learning should be regarded as very much in development, and it is important to note that it is not widely or routinely used by every lecturer in every single higher education institution that offers Property Law modules. Whilst the trend towards problem based teaching and learning is a step in the right direction, unfortunately it is

⁹ UK Centre for Legal Education, ‘Revised Law Subject Benchmark Statement: UKCLE Response’ (UKCLE, 2006), <www.ukcle.ac.uk/about/reports/qa> accessed 14 January 2016

¹⁰ P Orji, ‘Problem-based approach in property law – a university’s strategy in focus’ (2015) 49 *The Law Teacher* 372

not a silver bullet that can address all issues and problems with Property Law modules that will be discussed in this article.

2. Fragmentation of interests in real property

In the authors' experience, one of the single most difficult concepts for students to grasp in the study of Property Law is the fragmentation of interests in land; that is, the idea that more than one proprietary interest can be held in the same real property at the same time. This concept can be very difficult for students to comprehend. For example a landowner can possess the freehold estate of Greenacre, and can grant a leasehold estate to a tenant through the creation of a tenancy agreement.

3. Crossovers with other subjects

Property Law does not exist in a legal vacuum. Many concepts related to Property Law crossover with other branches of law. One of the most obvious crossovers is Property Law and the Law of Equity and Trusts. If students have not studied Equity prior to taking on Property Law it can be very difficult for them. Equally, if students study Equity and Trusts first, there may be Property Law concepts or practical examples that can be difficult understand. Examples of the crossovers between the two subjects are the concepts of a trust of land, and legal versus equitable mortgages.

To some extent the phenomenon of crossovers of subjects is not exclusively problematic to Property Law and Equity and Trusts. Other branches of law inherently overlap and are interconnected e.g. Business Law, Company Law and Contract Law are all connected. This overlap of subjects occurs because we cannot pigeonhole subjects and ignore their important crossovers with other subjects and topics. Indeed these crossovers and this interconnectedness is part of what makes the study of law interesting and challenging to legal scholars. Though admittedly this is difficult for students to appreciate and understand, and given that they have to be taught in bite size chunks i.e. modules, due to reasons of practicality, we have to have some way of splitting concepts up and 'subjects' seem to constitute the most appropriate way of doing so, even if it is imperfect. The delight of understanding this interconnectedness might only materialise when students reach the end of their degree programmes, when

they can look back and are able to finally piece together the connections and see the ‘bigger picture’, so to speak.

4. *Resources*

There are tens of textbooks available from various publishers and authors dealing with Property Law. Despite the wide array of textbooks on offer, selecting the ‘perfect’ textbook to accompany one’s Property Law module is not as easy a task as one might expect. Many can oversimplify what is a complex area of law. On the other hand, other textbooks can overcomplicate relatively simple concepts in many ways e.g. use of highly technical Property Law jargon without prior thorough explanation. The selection of an appropriate textbook is a difficult thing to get right, especially given that it will, to some extent depend on students’ individual abilities. Some styles of writing are easier for some students to understand than others.

Additionally, to date, the authors have been unable to find a textbook which adequately deals with the intricacies of the theoretical framework of property, but also which includes some practical information e.g. shows what a transfer deed looks like, how a notice or restriction appears on the register and how a restrictive covenant might actually be worded. These concepts can appear alien to students who have probably never purchased real property before, and thus have no relatable practical experience.

5. *Issues with assessment*

Traditionally, lecturers have tended to prefer closed book examinations to assess students’ abilities at the end of a Property Law course. Informally, there is also the perception amongst lecturers that *Foundation of Legal Knowledge* subjects (such as Property Law) should be assessed in such a way in order to preserve their authority perhaps. Oftentimes these closed book examinations consist of essays and problem questions. Essays often involve the detailed examination of an aspect of Property Law e.g. mortgages which require the students to regurgitate legal knowledge of the topic in rote fashion whilst critically analysing the law, perhaps by demonstrating evidence of wider reading on the topic through the citation of legal resources such as relevant journal articles or monographs. Problem questions usually consist of a fictional scenario related to an aspect of Property Law e.g. lease or licence which requires the student to provide advice to one or more of the parties featured in the question. This

requires students to apply the law and legal knowledge that they have acquired throughout their course to a specific scenario, as opposed to regurgitation of the law and critical analysis. Whilst both types of question have inherent value e.g. essay questions enable the development of skills related to critical analysis, essay questions do tend to neglect the assessment of application of the law to the facts. This skill is highly valued by future employers, whether that is legal employers or non-legal employers. Thus, care should be taken in the design of assessments by lecturers to ensure that they are testing skills that will enhance their employability. After all, one of the main reasons that students invest so heavily in themselves by attending university (aside from their own interest in personal academic development) is to enhance their employability to prospective employers so that they can get a good job in their chosen field (whether that field is directly related to the academic discipline that they choose to study or not).

C. The Future of the Law Degree: the LETR and the SRA Proposal

The preceding section has identified a number of problems associated with Property Law modules, which need to be addressed for pedagogic reasons. This section will consider other reasons for the need for evolution of Property Law modules. The Legal Education and Training Review (LETR) consisted of a comprehensive evidence-based review of legal education and training within England and Wales. The review examined all stages of legal training, including academic qualification, professional training and continued professional development of the regulated professions. The aim of the LETR was to ensure that England and Wales has a robust system for legal education, which promotes diversity in the professions and which satisfies the needs of service users. The LETR was jointly undertaken by the Solicitors Regulation Authority (SRA),¹¹ Bar Standards Board (BSB)¹² and the Institute of Legal Executives Professional Standards (IPS).¹³ Work on the Review commenced in June 2011, and the final Report was released in June 2013.¹⁴

This work is particularly concerned with the recommendations that the LETR made in relation to the academic stage of legal training. The Review made

¹¹ SRA Website, <<https://www.sra.org.uk/home/home.page>> accessed 17 December 2015

¹² BSB Website, <<https://www.barstandardsboard.org.uk>> accessed 17 December 2015

¹³ IPS Website, <<http://www.cilex.org.uk>> accessed 17 December 2015

¹⁴ LETR Final Report (June 2013) <<http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>> accessed 17 December 2015

recommendations pertaining to the quality of legal education, access to the professions and mobility, as well as flexibility.¹⁵ The regulatory bodies (e.g. SRA) are now considering what action they will be undertaking in light of the review and the recommendations made therein. Indeed the SRA is currently undertaking a public consultation on proposals it has put forward regarding modernisation of routes of entry to the profession.¹⁶ The SRA appears to favour the introduction of a universal examination, which all aspiring solicitors will have to undertake in order to qualify.¹⁷ This should mean that traditional LLB law degrees and the Graduate Diploma in Law (GDL) courses should be safe, as future solicitors will need to obtain the necessary legal knowledge to pass the examination somehow. However, it is thought that the Legal Practice Course (LPC) could be under threat. The LPC is prohibitively expensive for many, and as such is a barrier to the profession for less wealthy candidates (as government tuition fee loans are not available to fund it), ethnic minorities and women.¹⁸ The LPC was originally designed to provide aspiring solicitors with the practical skills needed to enter the profession. If the course is scrapped, future solicitors may look to the LLB degree to provide not only a solid academic legal education, but also some practical experience and practical skills which will help them firstly to pass the SRA's universal examination, but which will also be of use in their future careers as solicitors. Accordingly, the next section of this work will consider how Property Law modules (as QLD modules) can be adapted to address not only the current problems associated with study of the subject, but also how property modules can be used to advance practical legal knowledge and skills, in light of the SRA's favoured proposal.

D. Adapting Property Law to Address the Current Problems and Taking into account the LETR and the SRA Proposal

The LPC was originally designed to bridge the gap between procedural elements with the substantive law. The LPC has two aims:¹⁹

- i. to prepare students for work-based learning;

¹⁵ *Ibid*

¹⁶ SRA, 'SRA proposes a Solicitors Qualifying Examination for all new solicitors' *supra* note 4

¹⁷ M Harris (The Guardian Website), 'The legal education system may soon be overhauled – here's how' <<http://www.theguardian.com/law/2015/dec/07/the-legal-education-system-may-soon-be-overhauled-heres-how>> accessed 17 December 2015

¹⁸ *Ibid*

¹⁹ SRA, Legal Practice Course Outcomes 2011 (SRA 2011), version 2, 4

ii. to provide a general foundation for practice.

With regards to Property Law and Practice (PLP), a core module on the LPC, successful students should:²⁰

1. appreciate the nature of a property transaction;
2. be able to identify and perform the critical steps in a transaction;
3. be aware of conflicts of interest that may arise when acting for more than one party in a property transaction;
4. understand the requirements of lenders and the need to consider money laundering issues;
5. have a sufficient grasp of the tax aspects of a property transaction, including Stamp Duty Land Tax.

The aim of this paper is not to suggest incorporating all the elements of the PLP into Property Law modules on the LLB degree, but rather to make recommendations to improve Property Law LLB modules so that they equip students with the necessary skills required to become newly qualified solicitors and enhance their employability. The suggestions herein are aimed at equipping students with skills that are transferrable, such as drafting, negotiating and gaining ‘distinctively legal ways of approaching knowledge’,²¹ and thereby enhancing their employability.

The previous sections outlined the current problems encountered in teaching Property Law. The following sections will address these problems by making several recommendations to improve Property Law modules.

1. Teaching and Learning Approaches

Lecturers should carefully consider which teaching and learning approaches should be included in their Property Law modules. The increase in tuition fees, the removal of the cap on student recruitment means and proposed changes to legal education as well as the commercialisation of Higher Education institutions means that it is important for law schools to engage with new and innovative methods of teaching and to encourage students towards greater independence in learning in order to enhance the learning experience. Lecturers could select one of or a combination of the following approaches: active learning; experiential learning; and problem-based

²⁰ *Ibid* 15

²¹ E Mertz, ‘Language of Law School: Learning to “think like a lawyer”’ (OUP 2007) 3

learning. These approaches could be applied to module delivery as well as summative assessments throughout the course.

i) Active Learning

Although it is a term of imprecise meaning, active learning includes peer-to-peer learning, role-play and reflection. This approach can be incorporated into a Property Law tutorial where students are divided into teams of 4 to 5, and required to solve problems in their groups. The teams are then given the opportunity to discuss and argue their answers with other groups in the tutorial. The proposed method seeks to incorporate the traditional method of answering formative and summative assessments using the IRAC (Issues, Rule, Application and Conclusion) structure with a more practical approach. The advantage of this method is that it provides the students with an opportunity to develop key lawyering skills in terms of identifying the client's issues and applying this in a practical context.

Role-plays and simulations are a common feature on the LPC and BPTC. Incorporating these features into teaching LLB Property Law allows students to engage with the subject and reflect upon outcomes of the exercise. This goes beyond the current method of applying decided cases to a hypothetical scenario. Incorporating an active learning strategy as a teaching tool allows for the students to become 'researchers, teachers and advocates in one stride'.²² Active learning techniques facilitate the transfer of knowledge transfer and the development of key legal skills.²³

Active learning ensures that through using practical exercises such as drafting, problem solving and negotiating, students are able to 'learning like a lawyer'.²⁴ The importance of this skill is that students are able to bridge the gap between theory and practice, and thereby engage on a practical level with various abstract concepts such as legal charges, easements and adverse possession. Therefore, it is vital that Property Law provides students with 'core legal knowledge and legal reasoning skills'.²⁵ Varnava and Burrridge recommend that building legal knowledge requires the

²² Orji *supra* note 10 376

²³ G H Hess and S I Friedland, *Techniques for Teaching Law* (vol 11) (Carolina Academic Press, 1999) 55

²⁴ This phrase become associated with innovative teaching methods on legal education, e.g., A Niediecki, 'Lawyers and Learning: A Metacognitive Approach to Legal Education' (2006) 13 *Widener Law Review* 33; C S Hill, 'Collaboration Training with an Eye Toward outcomes and Assessment' (2010) 24 *Legal Writing Institute Second Draft* 3; LETR Final Report *supra* note 14, 132

²⁵ LETR Final Report *ibid*

teaching of appropriate and defined skills undertaken in a way which combines theoretical understanding with practical knowledge.²⁶ The tutor merely acts as a facilitator,²⁷ while the students play a more active role in constructing their understanding of knowledge. This is achieved through reflecting, problem-solving and communicating the outcomes of their findings.

ii) Experiential Learning

Experiential learning theory defines learning as “the process whereby knowledge is created through the transformation of experience. Knowledge results from the combination of grasping and transforming experience.”²⁸

It is grounded in the way individuals develop and although dependent on the individual’s reflections, benefits from the observation and critique of others.²⁹ The theory is called ‘Experiential Learning’ to emphasize the central role that experience plays in the learning process.³⁰ In 1984, David Kolb highlighted the principle that a person would learn through discovery and experience.³¹ The theory is called ‘experiential’ as its intellectual origins are taken from the experiential work of Lewin,³² Piaget,³³ Dewey,³⁴ Freire³⁵ and James,³⁶ forming a unique perspective on learning and development.

Kolb's experiential learning style theory is typically represented by a four stage learning cycle composed of concrete experience, reflective observation and abstract conceptualisation and active experiment.

The concrete experience may be prior work or study experience or created in exercises for the pursuit of learning objectives.³⁷ The second stage in the cycle is that

²⁶ T Varnava and R Burridge, ‘Revisiting Legal Education’, in R Burridge, K Hinett, A Paliwala and T Varnava (eds), *Effective Learning and Teaching in Law* (Routledge 2002) 5

²⁷ M Schwartz, ‘Teaching by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching’ (2001) 38 *San Diego Law Review* 347

²⁸ D Kolb, *Experiential Learning, Expertise as the Source of Learning and Development* (Financial Times/Prentice Hall, 1984) 41

²⁹ R Burridge, ‘Learning law and legal expertise by experience’ in R Burridge, K Hinett, A Paliwala and T Varnava *supra* note 26, 25

³⁰ Kolb *supra* note 28, 20

³¹ *Ibid*

³² K Lewin, ‘Field Theory and Learning’ in D Cartwright (ed) *Field Theory in Social Science: selected theoretical papers* (Harper 1951)

³³ J Piaget, *Genetic Epistemology* (WW Norton 1970)

³⁴ J Dewey, *Experience and Education* (Kappa Delta Pi 1938)

³⁵ P Freire, *Pedagogy of the Oppressed* (Myra Bergman Ramos Trans 1987)

³⁶ W James, *The Principles of Psychology* Vols 1 and 2 (Holt 1890)

³⁷ Burridge *supra* note 26, 28

of reflective observation. This requires stepping back from the task and reviewing what has been done and experienced. This stage allows for questions to be asked and communication channels are opened to others members of the team. It allows for feedback to be given to participants and for students to report on their experience. This stage allows for feedback to be provided to the students. This particularly important given that much individual and organisation ineffectiveness could be traced to a lack of adequate feedback processes.³⁸ Abstract conceptualisation is the application of thought and logic, as opposed to feelings, to the learning situation. Planning, developing theories, and analysis are part of this stage. The fourth stage is active experimentation and involves testing theories, carrying out plans, and influencing people and events through activity. Kolb believed that a complete cycle of learning involved each of these stages.³⁹

Experiential learning is not an alien concept in law schools. While its benefits and practices often feature, albeit unwittingly, through Mooting and Client Interviewing.⁴⁰ These two activities contain many of the characteristics of the experiential methodology. However, they are limited to the replication of a specific instance of lawyering activity. By way of example, dividing students during tutorials, into teams of 4 or 5, and providing them with a scenario involving a dispute concerning a lease together with an abstract of the lease allows them to apply the knowledge gained in the lectures on leases and licences. Students are then given the opportunity to apply the characteristics of a lease. More importantly, they are able to scrutinise the various clauses of a lease. The next activity involves role-playing. One student acts as a solicitor for the landlord while the other student represents the tenant. This exercise involves negotiating certain leasehold covenants. At the end of the session, students are provided with feedback and allowed to reflect on their work. Friedland suggests that students would benefit more from such an exercise if the legal documents ‘fell within the students’ day-to-day’ life, such as leases they have signed’.⁴¹ By encouraging students to undertake an enquiry of their existing world,

³⁸ Kolb *supra* note 28, 22

³⁹ *Ibid* 37

⁴⁰ Client Interviewing Competition, <<http://www.clientinterviewing.com/>> accessed 12/01/16

⁴¹ S Friedland ‘*Teaching property Law: Some Lessons Learned*’ (2002) 46 *St. Louis University Law Journal* 581, 593

from a Property Law perspective, their understanding of the subject is likely to become more nuanced.⁴²

iii) Problem Based Learning

Problem based is described as a variation of experiential learning where students are presented with the materials and issues underlying the problem from which they determine an appropriate solution, usually without the aid of prior instruction in the necessary approach to solve the issues.¹ The essential characteristics as of a PBL method include:

- Presenting the problem as a simulation of professional or real-life situation;
- Students working cooperatively as a group;
- Reapplying knowledge gained to the original problem and evaluating their processes.¹

An example of this is a law clinic, whereby students are able to apply their legal knowledge to a 'live client' case. This method allows students to distil from the raw materials and uncertainties of their client's information the facts, which may provide a legal remedy. It is not simply the application of substantive law that students are engaged in but client interviewing, practical legal research, case file management, drafting and advising the client.

Students do not view Property Law as defining relationships between private individuals and the state. When this concept is highlighted, it transforms the analysis into one of public interest, and one of concern for the community as a whole.⁴³ Thus, understanding Property Law in terms of rights and duties as concepts embedded in a wider construct of relationships,⁴⁴ assists in identifying the potential Property Law problems which may arise in a practical context. In order to imbue students with an understanding that Property Law is not simply related to a tangible piece of property but is in fact a bundle of legal rights and associated limits, students need to be provided with a framework with which they are able to understand and pursue the course learning outcomes while simultaneously equipping them with practical legal skills. This can be achieved by identifying relevant context for the students. To

⁴² *Ibid*

⁴³ *Ibid* 586.

⁴⁴ M A Glendon, *The Transformation of American Landlord-tenant Law*, (1982) 23 *Boston College Law Review* 503, 505

contextualise Property Law, modules should utilise popular culture by referring to media coverage of recent events. Surmounting the obstacle of archaic concepts can be achieved by translating these concepts into a more understandable set of terms.⁴⁵

2. Curriculum design

In order to avoid students viewing Property Law as constructed of various fragmented concepts, students should be provided with a structured framework with which to anchor their learning and apply their legal knowledge in a practical context. Property Law readily lends itself to a convenient organisational module structure, thereby giving students an overview of the entire conveyancing transaction. In order to overcome the issue of lack of topical relevance and Property Law's apparent lack of unity, providing students with an overview of the conveyancing process allow for the anchoring of abstract concepts in a practical setting.

Friedland contends that '[p]roperty law, unlike other basic law school courses, often defies an easy organizational framework'.⁴⁶ This appears to be due to the dearth of reference points from which students are able to understand the subject.⁴⁷ This can be overcome by teaching Property Law with reference to the conveyancing process. This would allow students to appreciate the relevancy of the material being taught and also apply it in a practical context. The traditional syllabus incorporates registered and unregistered land, estates and interests in land and their transfer, adverse possession, mortgages, the trust of land and co-ownership.⁴⁸ Incorporating the conveyancing process into the traditional syllabus, allows students to gain an appreciation of drafting particularly in relation to contracts for the sale of land and leases and also to apply, in a practical context, of concepts such as covenants, easements and co-ownership.⁴⁹ This would also address the issue regarding crossover with other subjects. By explaining the contracts for exchange, tutors are able to highlight the principles of contract law and provide students with a point of reference for their learning. Similarly, when teaching easements, tutors are able to explain that the effect

⁴⁵ Friedland *supra* note 41, 590. This method has already been applied in the sphere of Civil Litigation

⁴⁶ Friedland *supra* note 41, 585

⁴⁷ *Ibid*

⁴⁸ SRA <<http://www.sra.org.uk/solicitors/competence-statement/statement-legal-knowledge.page>> accessed 30 December 2015

⁴⁹ R Burridge, K Hinett, A Paliwala and T Vanava *supra* note 26, 27

of not registered an easement as Central Land Charge could amount to trespass. Thus, Property Law modules could be divided into the stages of a conveyance:

*A. Pre-contract stage*⁵⁰

The elements which would enhance the learning outcomes of teaching Property Law and bridge the gap between practice and substantive law are, taking preliminary instructions and advising on client care. This would allow the students to become familiar with ethical issues such as duress, conflict of interest and money laundering.

Deducing and investigating title depending on the transaction allows for the examination of title documents relating to registered and unregistered land. Students gain an opportunity to examine both Official Copies (registered land) and a conveyance (unregistered land). Moreover, they would be provided with an opportunity to examine how easements, restrictive covenants and legal charges are drafted and operate in practice.

B. The contract stage

Unlike traditional contract rules where an oral acceptance of an offer is sufficient to form a binding contract, property law requires the exchange of contracts. This stage provides students with an opportunity to consider the terms of any offer of finance and ensure that adequate finance is available before committing the buyer to the contract. This stage allows students to apply their theoretical knowledge to practical examples such as investigating title in both registered and unregistered land, examining an epitome of title and drafting requisitions on title.

C. Pre-completion stage

Under this stage, students are able to examine a mortgage offer and consider the interests of a mortgagee. Ethical issues can be considered in relation to acting for both the buyer and the lender. Students are introduced to the transfer document (TR1/TP1).⁵¹ By examining a transfer deed, students become familiar with the operation of positive covenants by creating a chain of indemnity.

⁵⁰ SRA, Legal Practice Course Outcomes *supra* note 19, 15

⁵¹ According to S.52 Law of Property Act 1925 a conveyance of land or of any interest therein must be executed by deed

3. Anchoring legal issues

Rather than simply determining legal issues and applying the relevant case law to these issues, it is suggested that students be provided with practical examples so that they are able to identify the legal issues and apply the relevant law. For example, tutorials based on examining pre-registration conveyance would ensure that students are able to see how co-ownerships is registered and how a joint tenancy may be severed in unregistered land. Scrutinising official copies of the register means that students are able to identify and discuss, easements, covenants and legal charges. Moreover, distinguishing between leases and licences can be achieved by allowing the students to examine own tenancy agreements. This practical based approach provides the students with an opportunity apply their experience, even if it is only limited to their tenancy agreement, to property related matters. By incorporating real life experiences students are able to gain a better understanding of the topic, rather than simply analysing cases.

4. Resources

i) Textbooks

Choosing a textbook, which addresses the concerns outlined in this article means selecting one that reflects the practical application of Property Law as well as the substantive law. Currently, there does not appear to be any textbooks, which provides this. Thus, instructors should consider the use of multiple books and other sources (e.g. web based materials), as opposed to the selection of one main textbook for the entire course.

ii) Technology

Virtual Learning Environments (VLEs) e.g. blackboard, have become a hugely important tool in the delivery of higher education. One of the key advantages of the VLE is that it makes available information that was previously inaccessible or information that was previously more difficult to access (e.g. it would require on-campus presence on the part of the student).

VLEs also provide an opportunity for the instructor to translate concepts from the real world to the virtual word by setting up an online discussion group. Setting up

such a group gives the students a venue out of the traditional classroom environment to discuss a recent court case or an issue of law in the media. VLEs allow students to enhance their communication skills and to receive feedback during informal discussions. The use of new learning technologies also sparks the interest of students, which is helpful for Property Law modules.

E. Conclusion

This article has highlighted a number of problems associated with Property Law modules at present, including: the perception that Property Law is a difficult and boring module to study; overemphasis on the historical background of real property; lack of contextualisation; fragmentation of interests in real property; difficulties due to crossovers with other subjects; problems with resources; and issues concerning assessment. These problems should be addressed in order to help students get to grips with Property Law, which is a highly fascinating, yet very complex subject. Furthermore, addressing these issues will likely improve student experience and enhance their employability. Additionally, these problems will need to be addressed in response to the LETR Final Report of 2013 and in light of the potential reform(s) proposed by professional bodies. The SRA for example, is considering the establishment of a single examination which aspiring solicitors would need to pass in order to gain entry into the profession. This may mean the end for the vocational stage of training i.e. the LPC. Whilst this article does not advocate that the LLB modules should absorb the entire LPC curriculum, it would be beneficial to reflect on how some aspects of the LPC might be successfully integrated into the LLB curriculum for the benefit of students. It is submitted that, at present, the LLB modules do not provide any experience on the practical aspects of the subject that they cover. Taking the example of Property Law, this article has demonstrated that little to no consideration is given to practical aspects of Property Law, and that this is detrimental to the students for the various reasons discussed in this work. Thus, this article has put forward a number of suggestions for the improvement of Property Law modules in order to address these concerns.